

## **REMARKS/ARGUMENTS**

Claims 1, 2, 4-8, 10-15, 19 and 20 are pending in the present application. Claim 1 has been amended to further distinguish the invention recited thereby over the prior art. Support for the amendments to claim 1 is found, *inter alia*, at p. 2, lines 30-32, p. 3, lines 3-15 and Fig. 1a. Two new claims, i.e., nos. 21 & 22, have been added to the application to cover additional aspects of applicant's invention. These claims are completely supported by the application as filed. In particular, support for claim 21 may be found in Figs. 1, 2 & 4 and at p. 3, lines 11-15. Support for claim 22 is found at p. 6, lines 3-5. No new matter has been added to the application. Upon entry of the present amendment, claims 1, 2, 4-8, 10-15 and 19-20, as amended, and new claims 21-22 will be pending in the application.

### **Allowable Subject Matter**

Applicants note with appreciation the Examiner's statement at p. 2 of the Office Action to the effect that claims 5, 11 and 12 contain allowable subject matter and, thus, would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### **Claim Rejections Under 35 U.S.C. §102**

Claims 1, 2, 4, 6, 7, 8, 10, 13, 14, 15, 19 and 20 are rejected under 35 U.S.C. §102(e) over U.S. Patent No. 6,917,754 to Pedrotti et al. ("Pedrotti '754") for the reasons given at p. 2 of the Office Action. The rejection is respectfully traversed for the reasons which follow.

In the "Response to Arguments" section at p. 3 of the Office Action, the Examiner submits that the Pedrotti '754 patent now cited to reject applicants' claims discloses an "equivalent pipe structure" to that described in EP 1 283 062, which was cited and distinguished by applicants in their previous response filed April 5, 2006. Furthermore, as to the arguments made by applicants in the April 5<sup>th</sup> Amendment concerning how their invention is distinguishable over the structure disclosed in EP '062, the Examiner has raised several issues, which are responded to below. In their response, moreover, applicants have clarified for the Examiner the

features of their device (see, e.g., claim 1) and method (see, e.g., claim 15), which distinguish their invention over the prior art.

To begin with, the Examiner points to applicants' argument that the pipe structure 4 in EP '062 is not a tube per se, since there is no perimetric space around the wick, and is, in fact, simply a curved wall. The Examiner alleges, however, that the above-described argument is not persuasive because: (1) the EP reference refers to element 4 as a "pipe"; and (2) Fig. 8 of the EP reference shows, at the lower end of pipe 4, a perimetric space around the wick, creating a chimney effect.

In response, applicants submit that, just because the patentee uses the word "pipe" to refer to an element (i.e., element 4), does not mean that the element actually contains all of the features commonly associated with a "pipe", as the meaning of that term is commonly understood by those working in the relevant art. As a matter of fact, element 4 in the U.S. '754 patent is not actually defined as having all of the elements of a pipe or tube. That is, at col. 4, lines 43-44, the patent states, "The draft regulator comprises a tube 4 with a partially removed wall . . ." (emphasis supplied by applicants). It is thus apparent that the word "tube" is used as a means for describing element 4, but the element 4 is clearly not being defined as a "tube". A tube having a partially removed wall (as shown in Figure 8 of the patent) is no longer a tube. That is, it is no longer tubular. Applicants argument is thus that in order to compare two different structures, i.e., the claimed invention and the structure taught in the prior art, one must look beyond the words used in describing them and, instead, take into account the actual features which they do (or do not) possess. Once such analysis is performed, it is immediately apparent that what is disclosed as element 4 in the '754 patent is not a tube.

Furthermore, as noted above, the Examiner argues that Figure 8 of the EP reference shows (as does, according to the Examiner, the applied U.S. '754 patent), at the lower end of the so-called "pipe", a perimetric space around the wick which creates a chimney effect. Applicants traverse this interpretation and respectfully submit that the Examiner has again apparently misconstrued the teachings of the reference with regard to the indicated structure. It is true that the lower portion of element 4 is a ring that defines a perimetric space. However, the height of such 'ring' is very low and it would be readily apparent that no chimney effect could be produced

by such a ‘ring’. Furthermore, it is impossible to create a chimney effect in the device described in U.S. ‘754 due to the fact that the resistor (R) is located at a much higher level than the ring of element 4.

Further to the above, the Examiner’s attention is respectfully directed to the fact that, while EP ‘062 describes a ‘chimney effect’ produced due to the heating of device R, no such “chimney effect” is described in the corresponding location of the U.S. ‘754 patent. See, e.g, col. 4, lines 42, *et seq.* Thus, it is reasonable to conclude from this that the patentees deleted the mention of a “chimney effect” from their U.S. patent following their discovery that no such effect is actually created by the structure of their device.

Still further, applicants direct the Examiner’s attention to col. 4, lines 48-51 of the U.S. ‘754 patent which, again, which has been amended with respect to the language used in the comparable location of the EP ‘062 reference. From the teaching beginning at line 50 of the U.S. reference cited by the Examiner, it is apparent that, [t]he rate at which the liquid substance is released to the ambient is varied by varying the portion of the wick **directly exposed to the heating device**. Thus, it is perfectly clear based on how the various elements are described, that element 4, regardless of how it is named in the reference, in fact acts as a shield between the wick and the resistor and that, in addition, there is no chimney effect created due to how the element is constructed.

The Examiner is respectfully requested to reconsider and withdraw the §103 rejection of applicants’ claims 1 and 15 for the reasons above. Moreover, as the remaining claims all depend, directly or indirectly, from claim 1 and thus contain all of the recitations of that claim. The dependent claims are, therefore, believed to be distinguishable over the prior art for the same reasons as claims 1 and 15.

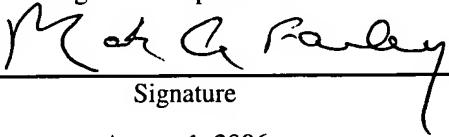
### Summary

As now recited in applicants’ independent claims, it is submitted that the invention is distinguishable over the U.S. ‘754 patent on at least the following bases: (a) the invention includes a tubular pipe, whereas in the ‘754 patent, such tubular pipe of the invention is missing; (b) in the invention, the tubular pipe contains an upper portion of the wick. In contrast, in the

'754 patent the wick is not contained in a tubular pipe and, in any case, the lower ring of the element 4 does not contain an upper part of the wick; (c) while in the present invention a perimetric chamber is defined around the wick between the upper portion of the wick and the pipe, no such chamber is created in U.S. '754; and (d) a chimney effect is created in the perimetric chamber of the invention. In U.S. '754, there is no such chimney effect created because the lower ring of element 4 is too short and the resistor is placed at a level above the ring. Accordingly, applicants contend that their invention is distinguishable over the art cited by the Examiner to reject their claims and that the Examiner should, therefore, reconsider and withdraw the claim rejections so that the entire application (including new claims 21 and 22) may proceed to issuance.

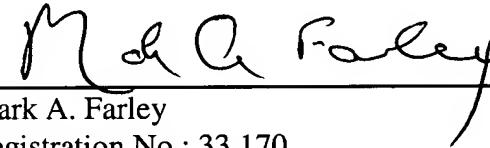
If the Examiner believes that an interview would serve to advance the prosecution of this application, he is respectfully invited to telephone applicants' representative at the number below and an interview will be arranged.

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as First Class Mail in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on: August 1, 2006

Mark A. Farley  
\_\_\_\_\_  
Name of applicant, assignee or  
Registered Representative  
  
\_\_\_\_\_  
Signature  
\_\_\_\_\_  
August 1, 2006  
\_\_\_\_\_  
Date of Signature

MAF:jl

Respectfully submitted,

  
\_\_\_\_\_  
Mark A. Farley  
Registration No.: 33,170  
OSTROLENK, FABER, GERB & SOFFEN, LLP  
1180 Avenue of the Americas  
New York, New York 10036-8403  
Telephone: (212) 382-0700